

LEGISLATURE OF NEBRASKA

NINETY-NINTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1128

Introduced by Flood, 19

Read first time January 17, 2006

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to the Uniform Commercial Code; to amend
2 sections 3-104, 3-416, 3-417, 4-207, and 4-208, Uniform
3 Commercial Code, Revised Statutes Cumulative Supplement,
4 2004, and section 3-103, Uniform Commercial Code, Revised
5 Statutes Supplement, 2005; to change provisions relating
6 to negotiable instruments and warranties; to eliminate
7 provisions relating to demand drafts; to provide an
8 operative date; and to repeal the original sections; and
9 to declare an emergency.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 3-103, Uniform Commercial Code,
2 Revised Statutes Supplement, 2005, is amended to read:

3 3-103 Definitions.

4 (a) In this article:

5 (1) "Acceptor" means a drawee who has accepted a draft.

6 (2) "Drawee" means a person ordered in a draft to make
7 payment.

8 (3) "Drawer" means a person who signs or is identified in
9 a draft as a person ordering payment.

10 (4) "Good faith" means honesty in fact and the observance
11 of reasonable commercial standards of fair dealing.

12 (5) "Maker" means a person who signs or is identified in
13 a note as a person undertaking to pay.

14 (6) "Order" means a written instruction to pay money
15 signed by the person giving the instruction. The instruction
16 may be addressed to any person, including the person giving
17 the instruction, or to one or more persons jointly or in the
18 alternative but not in succession. An authorization to pay is not
19 an order unless the person authorized to pay is also instructed to
20 pay.

21 (7) "Ordinary care" in the case of a person engaged
22 in business means observance of reasonable commercial standards,
23 prevailing in the area in which the person is located, with respect
24 to the business in which the person is engaged. In the case of
25 a bank that takes an instrument for processing for collection

1 or payment by automated means, reasonable commercial standards do
2 not require the bank to examine the instrument if the failure to
3 examine does not violate the bank's prescribed procedures and the
4 bank's procedures do not vary unreasonably from general banking
5 usage not disapproved by this article or article 4.

6 (8) "Party" means a party to an instrument.

7 (9) "Promise" means a written undertaking to pay money
8 signed by the person undertaking to pay. An acknowledgment of an
9 obligation by the obligor is not a promise unless the obligor also
10 undertakes to pay the obligation.

11 (10) "Prove" with respect to a fact means to meet the
12 burden of establishing the fact (section 1-201(b)(8)).

13 (11) "Remitter" means a person who purchases an
14 instrument from its issuer if the instrument is payable to an
15 identified person other than the purchaser.

16 (b) Other definitions applying to this article and the
17 sections in which they appear are:

18 "Acceptance".	Section 3-409.
19 "Accommodated party".	Section 3-419.
20 "Accommodation party".	Section 3-419.
21 "Alteration".	Section 3-407.
22 "Anomalous indorsement".	Section 3-205.
23 "Blank indorsement".	Section 3-205.
24 "Cashier's check".	Section 3-104.
25 "Certificate of deposit".	Section 3-104.

1	"Certified check".	Section 3-409.
2	"Check".	Section 3-104.
3	"Consideration".	Section 3-303.
4	"Demand draft".	Section 3-104.
5	"Draft".	Section 3-104.
6	"Holder in due course".	Section 3-302.
7	"Incomplete instrument".	Section 3-115.
8	"Indorsement".	Section 3-204.
9	"Indorser".	Section 3-204.
10	"Issue".	Section 3-105.
11	"Issuer".	Section 3-105.
12	"Negotiable instrument".	Section 3-104.
13	"Negotiation".	Section 3-201.
14	"Note".	Section 3-104.
15	"Payable at a definite time".	Section 3-108.
16	"Payable on demand".	Section 3-108.
17	"Payable to bearer".	Section 3-109.
18	"Payable to order".	Section 3-109.
19	"Payment".	Section 3-602.
20	"Person entitled to enforce".	Section 3-301.
21	"Presentment".	Section 3-501.
22	"Reacquisition".	Section 3-207.
23	"Special indorsement".	Section 3-205.
24	"Teller's check".	Section 3-104.
25	"Transfer of instrument".	Section 3-203.

1 "Traveler's check". Section 3-104.

2 "Value". Section 3-303.

3 (c) The following definitions in other articles apply to
4 this article:

5 "Bank". Section 4-105.

6 "Banking day". Section 4-104.

7 "Clearinghouse". Section 4-104.

8 "Collecting bank". Section 4-105.

9 "Depository bank". Section 4-105.

10 "Documentary draft". Section 4-104.

11 "Intermediary bank". Section 4-105.

12 "Item". Section 4-104.

13 "Payor bank". Section 4-105.

14 "Suspends payments". Section 4-104.

15 (d) In addition, article 1 contains general definitions
16 and principles of construction and interpretation applicable
17 throughout this article.

18 Sec. 2. Section 3-104, Uniform Commercial Code, Revised
19 Statutes Cumulative Supplement, 2004, is amended to read:

20 3-104 Negotiable instrument.

21 (a) Except as provided in subsections (c) and (d),
22 "negotiable instrument" means an unconditional promise or order to
23 pay a fixed amount of money, with or without interest or other
24 charges described in the promise or order, if it:

1 (1) is payable to bearer or to order at the time it is
2 issued or first comes into possession of a holder;

3 (2) is payable on demand or at a definite time; and

4 (3) does not state any other undertaking or instruction
5 by the person promising or ordering payment to do any act in
6 addition to the payment of money, but the promise or order may
7 contain (i) an undertaking or power to give, maintain, or protect
8 collateral to secure payment, (ii) an authorization or power to the
9 holder to confess judgment or realize on or dispose of collateral,
10 or (iii) a waiver of the benefit of any law intended for the
11 advantage or protection of an obligor.

12 (b) "Instrument" means a negotiable instrument.

13 (c) An order that meets all of the requirements of
14 subsection (a), except paragraph (1), and otherwise falls within
15 the definition of "check" in subsection (f) is a negotiable
16 instrument and a check.

17 (d) A promise or order other than a check is not an
18 instrument if, at the time it is issued or first comes into
19 possession of a holder, it contains a conspicuous statement,
20 however expressed, to the effect that the promise or order is not
21 negotiable or is not an instrument governed by this article.

22 (e) An instrument is a "note" if it is a promise and is
23 a "draft" if it is an order. If an instrument falls within the
24 definition of both "note" and "draft", a person entitled to enforce
25 the instrument may treat it as either.

1 (f) "Check" means (i) a draft, other than a documentary
2 draft, payable on demand and drawn on a bank, or (ii) a cashier's
3 check or teller's check. or ~~(iii) a demand draft.~~ An instrument
4 may be a check even though it is described on its face by another
5 term, such as "money order".

6 (g) "Cashier's check" means a draft with respect to which
7 the drawer and drawee are the same bank or branches of the same
8 bank.

9 (h) "Teller's check" means a draft drawn by a bank (i) on
10 another bank, or (ii) payable at or through a bank.

11 (i) "Traveler's check" means an instrument that (i) is
12 payable on demand, (ii) is drawn on or payable at or through a
13 bank, (iii) is designated by the term "traveler's check" or by a
14 substantially similar term, and (iv) requires, as a condition to
15 payment, a countersignature by a person whose specimen signature
16 appears on the instrument.

17 (j) "Certificate of deposit" means an instrument
18 containing an acknowledgment by a bank that a sum of money has been
19 received by the bank and a promise by the bank to repay the sum of
20 money. A certificate of deposit is a note of the bank.

21 ~~(k) "Demand draft" means a writing not signed by a~~
22 ~~customer, as defined in section 4-104, that is created by a third~~
23 ~~party under the purported authority of the customer for the purpose~~
24 ~~of charging the customer's account with a bank. A demand draft~~
25 ~~shall contain the customer's account number and may contain any or~~

1 all of the following:

2 (i) The customer's printed or typewritten name;

3 (ii) A notation that the customer authorized the draft;

4 or

5 (iii) The statement "no signature required",

6 "authorization on file", "signature on file", or words to

7 that effect.

8 Demand draft does not include a check purportedly drawn
9 by and bearing the signature of a fiduciary, as defined in section
10 3-307.

11 Sec. 3. Section 3-416, Uniform Commercial Code, Revised
12 Statutes Cumulative Supplement, 2004, is amended to read:

13 3-416 Transfer warranties.

14 (a) A person who transfers an instrument for
15 consideration warrants to the transferee and, if the transfer is by
16 indorsement, to any subsequent transferee that:

17 (1) the warrantor is a person entitled to enforce the
18 instrument;

19 (2) all signatures on the instrument are authentic and
20 authorized;

21 (3) the instrument has not been altered;

22 (4) the instrument is not subject to a defense or claim
23 in recoupment of any party which can be asserted against the
24 warrantor; and

25 (5) the warrantor has no knowledge of any insolvency

1 proceeding commenced with respect to the maker or acceptor or, in
2 the case of an unaccepted draft, the drawer. and

3 ~~(6) if the instrument is a demand draft, creation of the~~
4 ~~instrument according to the terms on its face was authorized by the~~
5 ~~person identified as drawer.~~

6 (b) A person to whom the warranties under subsection (a)
7 are made and who took the instrument in good faith may recover from
8 the warrantor as damages for breach of warranty an amount equal to
9 the loss suffered as a result of the breach, but not more than
10 the amount of the instrument plus expenses and loss of interest
11 incurred as a result of the breach.

12 (c) The warranties stated in subsection (a) cannot be
13 disclaimed with respect to checks. Unless notice of a claim for
14 breach of warranty is given to the warrantor within thirty days
15 after the claimant has reason to know of the breach and the
16 identity of the warrantor, the liability of the warrantor under
17 subsection (b) is discharged to the extent of any loss caused by
18 the delay in giving notice of the claim.

19 (d) A cause of action for breach of warranty under this
20 section accrues when the claimant has reason to know of the breach.

21 ~~(e) If the warranty under subdivision (a)(6) of this~~
22 ~~section is not given by a transferor under applicable conflict of~~
23 ~~law rules, then the warranty is not given to that transferor when~~
24 ~~that transferor is a transferee.~~

25 Sec. 4. Section 3-417, Uniform Commercial Code, Revised

1 Statutes Cumulative Supplement, 2004, is amended to read:

2 3-417 Presentment warranties.

3 (a) If an unaccepted draft is presented to the drawee for
4 payment or acceptance and the drawee pays or accepts the draft,

5 (i) the person obtaining payment or acceptance, at the time of
6 presentment, and (ii) a previous transferor of the draft, at the
7 time of transfer, warrant to the drawee making payment or accepting
8 the draft in good faith that:

9 (1) the warrantor is, or was, at the time the warrantor
10 transferred the draft, a person entitled to enforce the draft or
11 authorized to obtain payment or acceptance of the draft on behalf
12 of a person entitled to enforce the draft;

13 (2) the draft has not been altered; and

14 (3) the warrantor has no knowledge that the signature of
15 the drawer of the draft is unauthorized. + and

16 ~~(4) if the draft is a demand draft, creation of the~~
17 ~~demand draft according to the terms on its face was authorized by~~
18 ~~the person identified as drawer.~~

19 (b) A drawee making payment may recover from any
20 warrantor damages for breach of warranty equal to the amount
21 paid by the drawee less the amount the drawee received or is
22 entitled to receive from the drawer because of the payment. In
23 addition, the drawee is entitled to compensation for expenses and
24 loss of interest resulting from the breach. The right of the drawee
25 to recover damages under this subsection is not affected by any

1 failure of the drawee to exercise ordinary care in making payment.
2 If the drawee accepts the draft, breach of warranty is a defense
3 to the obligation of the acceptor. If the acceptor makes payment
4 with respect to the draft, the acceptor is entitled to recover from
5 any warrantor for breach of warranty the amounts stated in this
6 subsection.

7 (c) If a drawee asserts a claim for breach of warranty
8 under subsection (a) based on an unauthorized indorsement of the
9 draft or an alteration of the draft, the warrantor may defend
10 by proving that the indorsement is effective under section 3-404
11 or 3-405 or the drawer is precluded under section 3-406 or 4-406
12 from asserting against the drawee the unauthorized indorsement or
13 alteration.

14 (d) If (i) a dishonored draft is presented for payment to
15 the drawer or an indorser or (ii) any other instrument is presented
16 for payment to a party obliged to pay the instrument, and (iii)
17 payment is received, the following rules apply:

18 (1) The person obtaining payment and a prior transferor
19 of the instrument warrant to the person making payment in good
20 faith that the warrantor is, or was, at the time the warrantor
21 transferred the instrument, a person entitled to enforce the
22 instrument or authorized to obtain payment on behalf of a person
23 entitled to enforce the instrument.

24 (2) The person making payment may recover from any
25 warrantor for breach of warranty an amount equal to the amount paid

1 plus expenses and loss of interest resulting from the breach.

2 (e) The warranties stated in subsections (a) and (d)
3 cannot be disclaimed with respect to checks. Unless notice of a
4 claim for breach of warranty is given to the warrantor within
5 thirty days after the claimant has reason to know of the breach
6 and the identity of the warrantor, the liability of the warrantor
7 under subsection (b) or (d) is discharged to the extent of any loss
8 caused by the delay in giving notice of the claim.

9 (f) A cause of action for breach of warranty under this
10 section accrues when the claimant has reason to know of the breach.

11 ~~(g) A demand draft is a check as provided in subsection~~
12 ~~(f) of section 3-104.~~

13 ~~(h) If the warranty under subdivision (a)(4) of this~~
14 ~~section is not given by a transferor under applicable conflict of~~
15 ~~law rules, then the warranty is not given to that transferor when~~
16 ~~that transferor is a transferee.~~

17 Sec. 5. Section 4-207, Uniform Commercial Code, Revised
18 Statutes Cumulative Supplement, 2004, is amended to read:

19 4-207 Transfer warranties.

20 (a) A customer or collecting bank that transfers an item
21 and receives a settlement or other consideration warrants to the
22 transferee and to any subsequent collecting bank that:

23 (1) the warrantor is a person entitled to enforce the
24 item;

25 (2) all signatures on the item are authentic and

1 authorized;

2 (3) the item has not been altered;

3 (4) the item is not subject to a defense or claim in
4 recoupment (section 3-305(a)) of any party that can be asserted
5 against the warrantor; and

6 (5) the warrantor has no knowledge of any insolvency
7 proceeding commenced with respect to the maker or acceptor or, in
8 the case of an unaccepted draft, the drawer. and

9 ~~(6) if the item is a demand draft, creation of the item~~
10 ~~according to the terms on its face was authorized by the person~~
11 ~~identified as drawer.~~

12 (b) If an item is dishonored, a customer or collecting
13 bank transferring the item and receiving settlement or other
14 consideration is obliged to pay the amount due on the item (i)
15 according to the terms of the item at the time it was transferred,
16 or (ii) if the transfer was of an incomplete item, according to
17 its terms when completed as stated in sections 3-115 and 3-407.
18 The obligation of a transferor is owed to the transferee and to
19 any subsequent collecting bank that takes the item in good faith.
20 A transferor cannot disclaim its obligation under this subsection
21 by an indorsement stating that it is made "without recourse" or
22 otherwise disclaiming liability.

23 (c) A person to whom the warranties under subsection (a)
24 are made and who took the item in good faith may recover from the
25 warrantor as damages for breach of warranty an amount equal to the

1 loss suffered as a result of the breach, but not more than the
2 amount of the item plus expenses and loss of interest incurred as
3 a result of the breach.

4 (d) The warranties stated in subsection (a) cannot be
5 disclaimed with respect to checks. Unless notice of a claim for
6 breach of warranty is given to the warrantor within thirty days
7 after the claimant has reason to know of the breach and the
8 identity of the warrantor, the warrantor is discharged to the
9 extent of any loss caused by the delay in giving notice of the
10 claim.

11 (e) A cause of action for breach of warranty under this
12 section accrues when the claimant has reason to know of the breach.

13 ~~(f) If the warranty under subdivision (a)(6) of this~~
14 ~~section is not given by a transferor or collecting bank under~~
15 ~~applicable conflict of law rules, the warranty is not given to that~~
16 ~~transferor when that transferor is a transferee or to any prior~~
17 ~~collecting bank of that transferee.~~

18 Sec. 6. Section 4-208, Uniform Commercial Code, Revised
19 Statutes Cumulative Supplement, 2004, is amended to read:

20 4-208 Presentment warranties.

21 (a) If an unaccepted draft is presented to the drawee for
22 payment or acceptance and the drawee pays or accepts the draft,
23 (i) the person obtaining payment or acceptance, at the time of
24 presentment, and (ii) a previous transferor of the draft, at the
25 time of transfer, warrant to the drawee that pays or accepts the

1 draft in good faith that:

2 (1) the warrantor is, or was, at the time the warrantor
3 transferred the draft, a person entitled to enforce the draft or
4 authorized to obtain payment or acceptance of the draft on behalf
5 of a person entitled to enforce the draft;

6 (2) the draft has not been altered; and

7 (3) the warrantor has no knowledge that the signature of
8 the purported drawer of the draft is unauthorized. ÷ and

9 ~~(4) if the draft is a demand draft, creation of the~~
10 ~~demand draft according to the terms on its face was authorized by~~
11 ~~the person identified as drawer.~~

12 (b) A drawee making payment may recover from a warrantor
13 damages for breach of warranty equal to the amount paid by the
14 drawee less the amount the drawee received or is entitled to
15 receive from the drawer because of the payment. In addition,
16 the drawee is entitled to compensation for expenses and loss
17 of interest resulting from the breach. The right of the drawee
18 to recover damages under this subsection is not affected by any
19 failure of the drawee to exercise ordinary care in making payment.
20 If the drawee accepts the draft (i) breach of warranty is a defense
21 to the obligation of the acceptor, and (ii) if the acceptor makes
22 payment with respect to the draft, the acceptor is entitled to
23 recover from a warrantor for breach of warranty the amounts stated
24 in this subsection.

25 (c) If a drawee asserts a claim for breach of warranty

1 under subsection (a) based on an unauthorized indorsement of the
2 draft or an alteration of the draft, the warrantor may defend
3 by proving that the indorsement is effective under section 3-404
4 or 3-405 or the drawer is precluded under section 3-406 or 4-406
5 from asserting against the drawee the unauthorized indorsement or
6 alteration.

7 (d) If (i) a dishonored draft is presented for payment
8 to the drawer or an indorser or (ii) any other item is presented
9 for payment to a party obliged to pay the item, and the item is
10 paid, the person obtaining payment and a prior transferor of the
11 item warrant to the person making payment in good faith that the
12 warrantor is, or was, at the time the warrantor transferred the
13 item, a person entitled to enforce the item or authorized to obtain
14 payment on behalf of a person entitled to enforce the item. The
15 person making payment may recover from any warrantor for breach of
16 warranty an amount equal to the amount paid plus expenses and loss
17 of interest resulting from the breach.

18 (e) The warranties stated in subsections (a) and (d)
19 cannot be disclaimed with respect to checks. Unless notice of a
20 claim for breach of warranty is given to the warrantor within
21 thirty days after the claimant has reason to know of the breach
22 and the identity of the warrantor, the warrantor is discharged to
23 the extent of any loss caused by the delay in giving notice of the
24 claim.

25 (f) A cause of action for breach of warranty under this

1 section accrues when the claimant has reason to know of the breach.

2 ~~(g) A demand draft is a check as provided in subsection~~
3 ~~(f) of section 3-104.~~

4 ~~(h) If the warranty under subdivision (a)(4) of this~~
5 ~~section is not given by a transferor under applicable conflict of~~
6 ~~law rules, the warranty is not given to that transferor when that~~
7 ~~transferor is a transferee.~~

8 Sec. 7. This act becomes operative on July 1, 2006.

9 Sec. 8. Original sections 3-104, 3-416, 3-417, 4-207,
10 and 4-208, Uniform Commercial Code, Revised Statutes Cumulative
11 Supplement, 2004, and section 3-103, Uniform Commercial Code,
12 Revised Statutes Supplement, 2005, are repealed.

13 Sec. 9. Since an emergency exists, this act takes effect
14 when passed and approved according to law.